

ARGUMENTS/REMARKS

Applicants would like to thank the examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe and claim the subject matter which applicants regard as the invention.

Claims 1-32 and 34-52 remain in this application. Claim 33 has been canceled. Claim 53 has been added.

Claims 1, 40, 41, 49, and 51 were rejected under 35 U.S.C. §112 as failing to comply with the written description requirement. The Examiner argues that the specification does not support the claim language of “generating a graphical image” of the members, and the language “digital photographs”. Applicant traverses this rejection for the following reasons:

The claims have been amended to remove the “generating a graphical image” language, making the rejection moot. Furthermore, the Examiner is directed to the last paragraph of page 8, where it is clearly disclosed that characteristics, which may include a picture of a member, can be stored in the member profile in the database. The paragraph goes on further to state that these characteristics are used for identification over the contactless interface disclosed in the specification, which includes to a mobile device. Furthermore, the first full paragraph of page 9 discloses that members can decide which characteristics will be sent to other members as a message, and the second full paragraph of page 10 discusses the members receiving the message over a telephone, and the last paragraph on this page discusses contacting mobile users, using the contactless interface, by sending the message. Thus, these sections clearly support the amended claim language, and the use of “digital photograph”, as one skilled in the art would know that any photograph stored in a database would, by its nature, be a digital photograph.

Claim 52 was rejected under 35 U.S.C. §102(e) as being anticipated by Fraccaroli (U.S. Pat. App. 2004/0002348). Claims 1-4, 10-15, 29-32 and 34-47 were rejected under 35 U.S.C. §103(a) as being unpatentable over Fraccaroli (U.S. Pat. App. 2004/0002348) in view of Herz (U.S. 6,571,279). The remaining claims were rejected under 35 U.S.C. §103(a) as being unpatentable over Fraccaroli and Herz in view of various other additional cited references. For the following reasons, the rejections are respectfully traversed.

A Declaration under 37 CFR 1.131 Establishing Prior Invention has been executed by the inventors and provided with this amendment. This declaration states, and provides documentary evidence to support, that the invention, as reflected in the amended claims provided in this response, was within the possession of the inventors prior to the date of May 19, 1999. Thus, the invention predates the filing dates of both Fraccaroli (having a priority date of August 24, 1999) and Herz (having a filing date of May 19, 1999). Please note that Herz is a CIP of earlier filed applications, and thus it cannot be assumed that the disclosures of these earlier filed applications support the teachings cited by the Examiner. Accordingly, neither Fraccaroli nor Herz are properly considered prior art, and thus the rejections cannot stand and must be withdrawn.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

Appl. No. 09/890,702
Amdt. Dated June 19, 2007
Reply to Office action of December 22, 2006

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 33835.

Respectfully submitted,

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By: _____ / Robert F. Bodi / _____

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